

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) KONAP001			
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____	Application Number 10/677,098	Filed 9/30/2003			
	First Named Inventor Cheng				
	Art Unit 2457	Examiner Burgess			
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table style="width: 100%; border: none;"><tr><td style="width: 50%; vertical-align: top; padding: 5px;"><input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>37,955</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</td><td style="width: 50%; vertical-align: top; padding: 5px;"><u>/bqt/</u> _____ Signature <u>Bao Tran</u> _____ Typed or printed name <u>408-528-7490</u> _____ Telephone number <u>7/9/09</u> _____ Date</td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>				<input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>37,955</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	<u>/bqt/</u> _____ Signature <u>Bao Tran</u> _____ Typed or printed name <u>408-528-7490</u> _____ Telephone number <u>7/9/09</u> _____ Date
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<input type="checkbox"/> *Total of _____ forms are submitted.					

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
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7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Cheng

Application No.: 10/677,098

Filed: 9/30/2003

For: EFFICIENT TRANSACTIONAL
MESSAGING BETWEEN LOOSELY
COUPLED CLIENT AND SERVER
OVER MULTIPLE INTERMITTENT
NETWORKS WITH POLICY BASED
ROUTING

Examiner: Burgess, Barbara

Technology Center/Art Unit: 2157

PRE-APPEAL BRIEF

Commissioner for Patents

P.O. Box 1450

5 Alexandria, VA 22313-1450

Sir:

Applicant submits this Pre-Appeal Brief in response to the Final Rejection.

The Section 103 Rejection

10 Claims 1-2, 5-6, 9-12, 14-17 and 20 were rejected under 35 U.S.C. 103(a)
as being unpatentable over Bandini et al. (hereinafter "Band", US Patent Publication
2005/0081059 A1) in view of Roach (US Patent 6,018,577) and Applicant's Admitted
Prior Art (AAPA). Band relates to a relay that provides message filtering services to an
e-mail network.

15 Roach relates to a data messaging method for communicating a short data
message between a message sender and a message recipient using the existing facilities
and capabilities of the public switched telecommunication network and without
establishing a telephonic connection therebetween, thereby reducing the time and cost
required to communicate a data message between the parties as compared to current
20 methods. The Roach method communicates a user-definable data message between a
message sender having telephone terminal equipment and a plurality of telephone lines
associated therewith, and a message recipient having telephone terminal equipment and a
telephone line associated therewith. According to the method, a first plurality of data
message portions are associated in one-to-one correspondence with the message sender's
25 plurality of telephone lines. The data message is then parsed into a second plurality of
data message portions taken from the first plurality of data message portions. The second
plurality of data message portions are communicated to the message recipient by
initiating successive telephone calls to the message recipient's telephone line on message
sender telephone lines which are selected for their respective association with data
30 message portions of the first plurality of data message portions that match the data
message portions of the second plurality of data message portions. Upon receiving

information identifying the message sender telephone lines from a calling party identification service, the data message portions of the first plurality of data message portions corresponding to the selected telephone lines are determined and presented to the message recipient.

Applicants respectfully traverse the rejection. The present system enables WIRELESS or MOBILE computing devices (including devices acting as clients, servers or both) using intermittent networks to have the same quality of service as traditional LAN-based transactional systems but doing so in a much more efficient manner. It also addresses the challenges of using multiple networks that have different communication costs associated with them. A device using an intermittent network can send a message and once it is assured that it has been received on the other end, it does not need to keep the connection open.

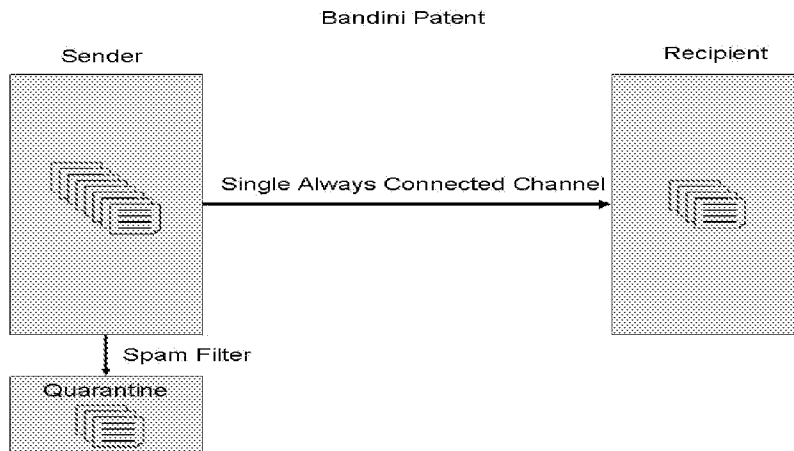
Here, Band is not a wireless/mobile system with multiple communication channels. Band deals with spam issues, which occurs in bandwidth rich systems that can handle emails transmitted over local and public networks. Band's rules are not dynamically updated. At best, Band's email relay statically applies filtering policies to incoming emails. Band's updating of the policy to deal with latest virus is not the claimed "dynamically updating the first policy by sending a second message to the first device, the second message being a system message that results in the addition, deletion or other modification of the rules contained in the policy to reduce the cost of sending messages over the intermittent network of computing devices."

Band's invention reduces bandwidth utilization by not sending a percentage of messages that are suspected to be spam and instead sent to a quarantine location. In contrast, the present system reliably sends all messages to the receiver but does so in a cost effective manner by finding the most appropriate channel with which to send a message based on its priority and the dynamic policy.

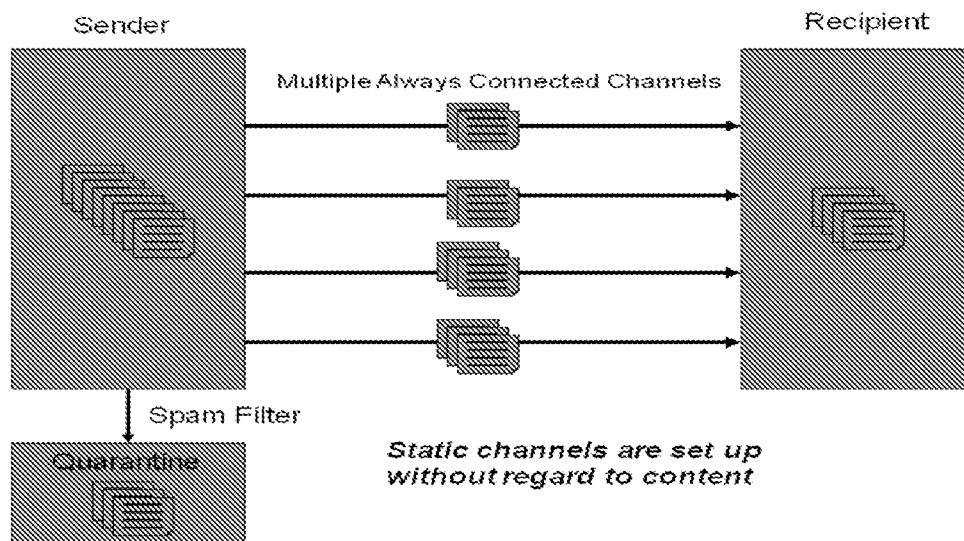
Roach offers a method for reducing the cost of sending data by configuring and utilizing multiple telephone lines. While this may be extended to computer networks, Roach sets up a static set of telephone lines and takes no consideration into the content of the data, whereas the present system allows attributes of the data such as priority, size and security to be combined with a dynamic policy to find the best channel to transmit the message that will reduce the overall cost of sending all messages.

Band and Roach fail to show dynamically updating the first policy by sending a second message to the first device, the second message being a system message that results in the addition, deletion or other modification of the rules contained in the policy to reduce the cost of sending messages over the intermittent network of computing devices.

Here, Band address spam problems and has nothing to do with an efficient transmission of data in an intermittent medium such as wireless medium. Band provides a delivery delay and the delayed data packages are maintained in a quarantine storage area until a policy is applied to the data packages. The application of the Band policy to the delayed data packages is determined by reference to a delay processing module. Band is not about reducing the cost of sending messages over an intermittent network. In fact, Band points to the opposite direction, as spamming prefers networks that are continuously connected rather than intermittently connected. Band is diagrammed below

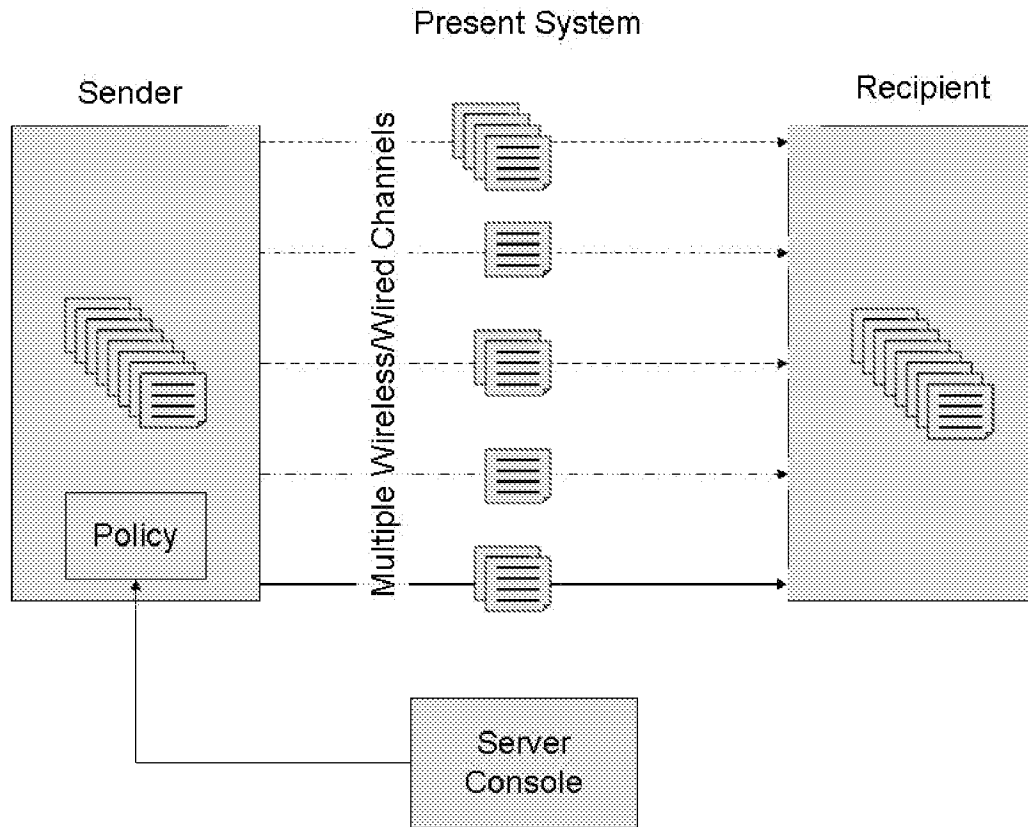


As illustrated below, the combination of Band and Roach would result in a system where static channels are set up without regards to the content. Thus, neither Bandini or Roach uses the CONTENT of the message to set up the channels for achieving cost savings, whereas in embodiments of the present invention, attributes such as message size and priority combined with a POLICY.



In contrast, the present system solves the problem of communicating over multiple wireless channels that have different costs and the system selects the lowest cost to communicate. For example, if WiFi and cellular channels are available and if WiFi is free, the system would select WiFi as the communication channel of choice. However, if WiFi is not free, but the user is on a cellular plan with unlimited data transmission, the system would pick cellular channel for communication. In other scenarios, using a rule based channel selection, the system can be more sophisticated. As demonstrated above, Band fails to disclose applying a first policy to reduce the cost of sending messages over the intermittent network of computing devices, the first policy containing one or more rules to determine whether to send the first message to the second device, each rule being a function of one or more messaging attributes of messages, channels or the system environment. One embodiment of the instant invention is diagrammed

below



Since at least two elements are missing in the independent claim, Band and Roach cannot render claim 1 obvious as well as claims dependent therefrom. Withdrawal of the rejection is respectfully requested.

As to the remaining claims, neither Band, Roach nor AAPA shows: (b) applying a first policy to reduce the cost of sending messages over the intermittent network of computing devices, the first policy containing one or more rules to determine whether to send the first message to the second device, each rule being a function of one or more messaging attributes of messages, channels or the system environment; and (c) dynamically updating the first policy by sending a second message to the first device, the second message being a system message that results in the addition, deletion or other modification of the rules contained in the policy to reduce the cost of sending messages over the intermittent network of computing devices. Hence, the dependent claims are allowable since they depend from allowable claim 1. Moreover, the references do not show the specifics of each dependent claim.


To summarize, with respect to the rejection of claim 1, in the absence of any teachings about applying a first policy to reduce the cost of sending messages over the intermittent network of computing devices, the first policy containing one or more rules to determine whether to send the first message to the second device, each rule being a function of one or more messaging attributes of messages, channels or the system environment or dynamically updating the first policy by sending a second message to the first device, the second message being a system message that results in the addition, deletion or other modification of the rules contained in the policy to reduce the cost of

sending messages over the intermittent network of computing devices, neither Band nor Morris can render claim 2 obvious. Further, the suggestion to combine the two to arrive at the claimed invention arises from hindsight as taught by the instant application.

As discussed above, there is no suggestion to modify Band to arrive at the invention as claimed. There is no reasonable expectation of success since the needs of spam control differs from the needs of sharing digital image in Morris. Finally, Morris or Band does not teach or suggest all the claim limitations in the independent claims as well as each dependent claims. Since the teaching or suggestion to make the claimed combination and the reasonable expectation of success is not found in Morris or Band, there is an inference that it came from Applicants' disclosure. Thus, neither Morris nor Band can render obvious the independent claim and those claims dependent therefrom. Moreover, they are allowable since neither Band nor Morris shows the specifics as recited in the dependent claims.

Applicant points out that the Examiner bears the initial burden of factually establishing and supporting any *prima facie* conclusion of obviousness. *In re Rinehart*, 189 U.S.P.Q. 143 (CCPA 1976); M.P.E.P. § 2142. If the Examiner does not produce a *prima facie* case, the Applicant is under no obligation to submit evidence of nonobviousness. *Id.* In the instant case, the Examiner has not pointed to any evidence in Morris, or how knowledge of those skilled in the art, provide a suggestion or motivation to modify the reference Band teaching so as to produce the claimed invention of (a) creating a first message on a first device, the message intended to be sent to a second device over the network via at least one channel; (b) applying a first policy to reduce the cost of sending messages over the intermittent network of computing devices, the first policy containing one or more rules to determine whether to send the first message to the second device, each rule being a function of one or more messaging attributes of messages, channels or the system environment; and (c) dynamically updating the first policy by sending a second message to the first device, the second message being a system message that results in the addition, deletion or other modification of the rules contained in the policy to reduce the cost of sending messages over the intermittent network of computing devices. See *In re Zurko*, 59 U.S.P.Q.2d 1693 (Fed. Cir. 2001) ([I]n a determination of patentability the Board cannot simply reach conclusions based on its understanding or experience - or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings). Applicant submits that Band and Morris cannot render independent claim 1 obvious. Further, claims that depend from the independent claims are also patentable. Applicant submits that all claims in the case, as amended, are in condition for allowance. If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 408-528-7490.

Respectfully submitted,



Bao Tran
Reg. No. 37,955